IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE B.PRAKASH RAO
AND
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21306 of 2005

Dated: 4th September, 2006

Between:

The District Educational Officer &
Member Convenor, District Selection
Committee, Nizamabad & others.

.. Petitioners

and

B.Annapurna .. Respondent

THE HON'BLE MR JUSTICE B.PRAKASH RAO
AND
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21306 of 2005

ORDER:

The petitioners herein representing the Educational Department and other authorities of the Government of Andhra Pradesh, filed this writ petition *inter alia* seeking a Writ of Certiorari assailing the orders in O.A.No.8224 of 2003 dated 25.2.2005 on the file of the A.P. Administrative Tribunal, Hyderabad allowing the application filed by the respondent herein under Section 19 of the Administrative Tribunal's Act, 1985 and setting aside the impugned proceedings therein dated 21.11.2003 issued by the petitioner No.1 herein rejecting the candidature of the respondent herein for being appointed as Telugu Pandit Grade-II.

Heard the learned Government Pleader for Services-I on behalf of petitioners and Mr.Shiva, learned counsel appearing on behalf of respondent.

The brief facts which are necessary for disposal of this writ petition are that the respondent herein who was the applicant before the A.P. Administrative Tribunal claims that she is a Graduate having passed B.A. and also Telugu Pandit Training. In pursuant to a notification issued for selection to the post of Telugu Pandit Gr.II in DSC 2001, she has submitted an application and she was issued with Hall Ticket No.18350076. In the written test conducted thereby, she has secured 52.11 marks and she was placed at Serial No.215 in the merit list. However, the candidates standing upto Serial No.214 were only selected. Of these so selected candidates, one Smt.Shobha Rani, OC candidate standing at Serial No.212 and securing 52.23 marks was also appointed and she was posted at Zilla Parishad High School, Birkur. However, on a complaint made against her as to her claim of local candidate, an enquiry at the instance of local District

Telangana Rashtra Samithi, Nizamabad was conducted and in the said enquiry, it was found that Smt.Shobha Rani is not a local candidate and she has completed her education i.e. Classes I to X at Nalgonda district and therefore she is a non-local, which fact has been suppressed by her and secured the appointment claiming herself as a local candidate. Ultimately, basing on the said enquiry, her appointment to the said post of Telugu Pandit Gr.II was cancelled and she was removed from service vide proceedings No.1823/A3/2003 dated 31.3.2003.

The case of the respondent/applicant that having regard to the fact that such appointment was ultimately having been found not validly made and there is a clear vacancy now arisen as a result of such cancellation of appointment and she being standing at Serial No.215 immediately next candidate, is entitled for appointment to the said post. Therefore the respondent made representation to the petitioners and in spite of the same, her case was not considered in proper perspective and ultimately it was rejected by impugned order dated 21.11.2003 on the ground that there is no provision under the rules. Such a rejection, according to the respondent/applicant, is wholly illegal, arbitrary and Articles 14, 16 and 21 of the Constitution. Hence she filed O.A. before the A.P. Administrative Tribunal, Hyderabad.

Contesting the claim of the respondent, the petitioners herein filed counter affidavit before the Tribunal denying any such entitlement by the respondent and further reiterating the correctness and validity of the impugned proceedings. The rules applicable to such selection do not provide any such contingency nor would allow giving such appointment to the next candidate. Therefore, the claim is liable to be rejected.

On considering the rival claims and submissions made on behalf of both sides, the Tribunal ultimately allowed the O.A. holding that having regard to the fact that it is only due to the mistake on the part of the authorities in appointing such a candidate who was in fact not a local candidate and therefore such a vacancy should go to the next in line. While holding so, the Tribunal followed the judgment in O.A.No.657 of 2004 and batch dated 27.9.2001 and also the principles laid down in 1999(2) ALT 33 (T.RAJESWARI v. VICE CHANCELLOR-CUM-CHAIRMAN, SREE VENKATESWARA UNIVERISTY SELECTION COMMITTEE, TIRUPATI AND OTHERS). Hence the writ petition.

The learned Government Pleader for Services-I strenuously contended that in the facts and circumstances of the case and especially having regard to the specific provision contained in Rule 13 of the A.P. Direct Recruitment of Teachers (Scheme of Selection) Rules, 2000 as framed in G.O.Ms.No.72, Education (Services-VI) dated 3.7.2000, there is no provision for waiting list and therefore, the person next is not entitled for any consideration nor has any such enforceable right. It is not a vacancy arisen to fall back from such waiting list. It is only a vacancy arisen due to cancellation of appointment, and such vacancy has to be notified in the next recruitment.

Considering these submissions and other submissions in detail and also perusal of the material, there is no dispute to the aforesaid submissions leading to the filing of present O.A. by the respondent seeking to assail the impugned action rejecting her claim in a vacancy so caused. The fact remains that from among those candidates, the respondent/applicant was successful having secured fair and good number of marks and placed at serial

No.215 in the merit list. However, the selection process stopped at Serial No.214 and therefore the respondent/applicant could not have possibly selected at that point of time. However, there is no dispute to the fact that one among such selectee Smt.Shoba Rani who claimed herself as a local candidate and ultimately on a complaint from the busy bodies, an enquiry was held and she was found to be a non-local and she hails from Nalgonda district and therefore, ultimately she was removed from service by proceedings dated 31.3.2003. It appears, the said Shoba Rani did not challenge the said proceedings and the same has become final. As a result, the vacancy arose which is nothing but correcting the mistake on the part of the authorities and also possibly on a misrepresentation and fraudulent claim made by Smt.Shobha Rani. Therefore, it is not a case where vacancy arisen for any other reasons attributable to other than improper selection. The Rule 13, which has been relied upon by the learned Government Pleader, reads as under:

"13: PREPARATION OF SELECTION LISTS:

1) The number of candidates selected shall not be more than the number of vacancies notified. There shall be no waiting list.
2) ……..
3) …….

Under the aforesaid provision and also other rules read together, the object as sought to be enunciated is only to restrict number of candidates to that of number of vacancies notified. It is a clear intention on the part of the authorities and as a policy decision and supported by statutory provision, to avoid the maintenance of waiting list for any such contingency arisen from among the persons to set up a claim. However, the present

situation, as rightly held by the Tribunal, the vacancy had arisen in view of the mistake done by the authorities in the selection process. It is also attributable against the person who falsely claimed herself as a local candidate, who was ultimately removed from such post. Thus, there was no valid appointment to a vacancy, which has been notified. Having regard to the fact that such vacant post remains unfilled, is necessary to be filled, subject to the number of vacancies vis-à-vis number of candidates so selected on merit. Consequently, it has to be held that the respondent/applicant being immediately next in line standing at Serial No.215, has been rightly held to be entitled for such post and the objection raised on behalf of the petitioners herein that since there is no such waiting list, the respondent cannot be considered, does not hold any water or merit for consideration. Admittedly, there is no waiting list in the present case and the respondent sought appointment as against the vacancy that has arisen pursuant to the selection. This vacancy which arose due to improper selection shall be deemed to have been in existence as on the date of selection process, but not later.

Having regard to the same, we do not find any merits in the contentions urged on behalf of the petitioners and the writ petitioners have not made out any valid ground to interfere with the order passed by the Tribunal.

Accordingly, the writ petition is dismissed. No order as to costs.

_____

B.PRAKASH RAO, J

_____

RAMESH RANGANATHAN, J

Dated: 4th September, 2006

DA